

Legal implications of the city of Colombo Development Plan (part II)

by E. H. Pamaratne
(Former Director Planning
UDA and Ex-Secretary of the
Institute of Town Planners, Sri
Lanka. B.A/ Dip. in Urban
Development/MSC in Town and
Country Planning)

Continued from Wednesday

In p. 44 - 48 of Vol. I of the development plan the team has produced a list of projects which could only be identified as a wish list. Can this be treated as the program required by law, being only a wish list of UDA professionals. The above list tabulated under four columns of Name of the Project, Estimated Cost, Responsible Agency and Remarks is neither complete nor serious. The details given in the columns are so vague that even the scope of the project cannot be known from it by those who will be affected by the implementation of these projects either adversely or advantageously. Out of the wish list of 71 projects some estimates have been given only in case of 22 items. Although in column 3 the responsible agency has been given it is not clear whether they have committed to funding these projects and accordingly program them. If these agencies had been involved from the inception, the wish list could have been more practical, and the availability of funding could have been the foundation on which the superstructure of planning and building regulations built. Performance of this task is the purpose of the Planning Committee, provided for by the 8B of Act No. 4 of 1982.

Investment Projects on one hand, basically add to the material assets in a development area, and on the other hand raises the productivity of land in that area. In addition it also adversely affects some land owners whose lands are tipped for acquisition for the laying out of new infrastructure and utility services or expansion of the same. These also may be affected by various reservation requirements imposed by the Plan. The investment plan also may require to raise the rates and taxes which might affect those who do not accrue any direct benefit from the DP. Loss of traditional tranquility and social harmony also could result from the development plan. So the decision to carry out the projects being by a statutory authority having legal power to determine matters affecting the rights of subjects should be prepared to answer at any legal suit against them both under fundamental right as well as writ jurisdiction of the courts which have been empowered by Articles 126 and 140 of the Constitution, "To face any action coming under above situations the development plan should have been objectively determined, reasonable and is not in excess of powers conferred by Law and is subject to the principle of Rule of Law the essence of which is the freedom from subjectivism."

For a Program to be so it should provide the following information to the affected parties.

i) Scope of each project. ii) Location or locations of projects iii) Exact lay out of the project to an accurate scale so that land owners can know how it affects their properties iv) Detail estimates of works (details may not be gazetted but should be retained in an untamperable situation to be produced in Courts in case of requirement) . v) Budgetary commitment by individual agencies : vi) Executing agency

unambiguously identified so that affected parties can deal with them (vii) program of implementation viii) at least pre feasibility giving costs and benefits. As determined in the case of Bandula V Almeda (1995) Sri L LR part 12 and 13, only then a public agency can go for land acquisition required by the project. Therefore the wish list contained in Vol. -I does not qualify to be a development Programme intended to provide amenities and services required by the City.

As the work programme is intended to serve the community that will live and use the city facilities, or in other words the demand for the services and amenities to be provided there is a close link between the population projections, its distribution within the town, composition of population by income groups and allocation of lands for other uses. As per the population projections from the data given in the plan it seems that they have rather adopted a reverse process from a hypothetical 1 mn in 2010 to go back to 1996 and adjust it to suit the projected population. Distribution of population also is adopted to suit unusually high densities. This makes the DP follow a scientific process in arriving at the actual needs of the community. Thus actual community needs have to be based on proper population projections. The relationship of the community demand and the envisaged supply of amenities and services is emphasised by Sec. 8 H

According to the demographic Survey of 1994 issued by the Department of Census and Statistics, the 1994 population in Colombo was 666797. This represents an average annual growth rate of 0.9%. When the population is estimated for 2010 adopting this authoritative growth rate it cannot exceed 763280. Instead of adopting a scientific AAGR, the development plan fixed a hypothetical figure of 1,000,000 for 2010 and counted back adjusting population of 1996 to be 721443 and working out the A A G R to be 2.42% for the purpose of projections. Then they worked out the A A G R for 1996 over 1981 to 1.75% in 1994 and for purposes of projection they applied an arbitrary 2.42%. This subjective approach shatters the very foundation of a development plan.

To arrive at correct conclusions in a development Plan the planners should use analyses of the following facts objectively.

1. Population. This represents the future demand for which the provision of services and amenities should be decided. To arrive at a correct decision it is necessary to deal with the historical growth, distribution, income level and age composition. In addition it has to be matched with the regional and sub-regional growth to determine the exact attractive areas. The targets should not be subjectively set.

2. Land use pattern, its problems, land values and deficiencies in infrastructure in relation to the land use trends that are taking place.

3. Sub system analysis. Under this category present and future demand, deficiencies, under utilization, distribution pattern, etc. should be as accurately as possible done. The existing and needed capacities should be studied very objectively.

4. The government policies and investment program as well as potential or future investment in the

See page 12

Legal implications.....

selected urban area should be clearly identified. Only on this basis a committed work program can be made.

Among the above the present plan is armed with only a miscalculated population projection and a partial analysis of land uses. The analysis of sub-systems is quite inadequate. It should be thoroughly kept in mind that the final outcome of a DP being interference in individual land rights every single decision represented in the form of Regulations should have an objective and scientific bearings. There should not be room for personal whims and fancies to influence the regulations. It seems that the DP suffers from the latter, and is ultra vires to that extent.

Unless the regulatory machinery is complemented with an action program it only reflects a physical planning approach which has long been abandoned. British planning system adopted the Development Planning Approach as far back as 1947 with the introduction of the Town and Country Planning Act in 1947. In Sri Lanka until the coming of the UDA what was in vogue was the physical planning practice given in the Town and Country Planning Act. Under it there was no need to have a compulsory investment program as part and parcel of the Planning Scheme.

The need to have an action program with funding from relevant government sectoral agencies was foreseen even in the principal act in which there was no provision for preparation of a DP. This act empowered the UDA to co-ordinate, regulate and direct the government agencies with respect to their investment. Sub-sections 8(p), and (s) provide for the directing of infrastructure agencies to fall in line with the DP.

Section 8 states "The powers and functions of the Authority within any Development Area shall be to

8 (p) to approve, coordinate and control development projects or schemes of any government agency in such areas.

8 @ to regulate any planning project or scheme prepared by any Government agency or any other person .

8 (s) to call upon any government agency at

the request of the government to undertake in consultation with the Authority any development projects or schemes and to regulate the activities of such projects or schemes.

The above shows the importance given to the inclusion of a development program in the DP. Further to this Section 8 J and 29 also provide the Authority powers that are useful in coordinating the Government agencies, which in the context of Sri Lanka hold almost a monopoly authority over the provision of infrastructure and amenities at Local Level.

Section 8 J requires any Government agency of any other person to obtain approval from the authority before carrying out any development activity. It states "notwithstanding the provisions in any other law, no Government agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions of a permit issued in that behalf by the authority" The important term development activity is defined to include 4 elements by definition section of 29

This involves carrying out of building engineering or other operation on, under or over such land. The objective of this element is to include all infrastructure and utility works as development activities requiring prior planning approval.

The regulation of public agency development activities are further strengthened by making the authorities vicariously liable for them. Sec. 28 C provides for this.

Another important aspect of the development Plan is the submission of it for the comments of the Colombo Municipal council. This is done under Sec. 8 D of the amendment Act. The Local Authority has been given a period of 60 days to submit their comments to the Authority. I wonder whether the CMC members made use of this opportunity to measure the impact on the life of the people, this Development Plan exerts. The planning standards set by the Plan are so serious it will make a large areas in the city suffer from planning blight. For instance an extent of 315 Ha.

From page 11

Identified as the Recreational Zone along the beach from Kollupitiya to Wellawatta is a well built area, that has become a victim of professional arbitrariness. Further imposition of a minimum of 10 floors in Mixed and Concentrated Development zones cannot be achieved unless proportionate improvements in all amenities are done. In this context it would have been ideal if the lawyers of both the UDA and CMC gave their comments prior to submission of this to the Minister for approval. In this regard it should be mentioned with thanks that the Institute of Town Planners held a Work Shop to discuss this important document on 6th Nov. 1999. It was disclosed at this workshop by an officer of the Legal Draftman's Department who had been invited to make a presentation that this Plan has been gazetted without obtaining the concurrence of the Legal Draftsman. He also reiterated the problem of defending the authority in any legal action taken by affected parties as the document is not up to the standard of a legal document.

Another important issue is the fact that the Municipal Council of Colombo enjoys delegated powers under Sec. 23(5) of the UDA Act to prepare Development Plans, process development applications and take action against unauthorized development. Therefore this plan should have been prepared and published in the name of the CMC and not under the name of the UDA. It is the Planning committee of the CMC that has the legitimate authority to prepare the DP. As it stands UDA cannot interfere in this matter without, revoking the powers delegated to CMC. In this context it is left to the legal luminaries to discuss the legality of this Development Plan.

So without a program to provide services and amenities and the above discussed legal issues it is left to the legal authorities to determine the legality of the city of Colombo Development Plan. With these my understanding is that it suffers from a serious legal vacuum. I intend this article as a basis for discussion by professionals as the issues highlighted by me are still to be solved. Therefore I would be much obliged if those who have interest in the field of Town Planning express their opinions.